THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

and

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO.17880 OF 2005

Between:

International Foundation of Human Development …Petitioner

And

State of Andhra Pradesh rep. by its Principal

Secretary to Government, Medical and Health

Department and another …Respondents

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

and

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WRIT PETITION NO.17880 OF 2005

O R D E R (Per the Hon'ble Sri Bilal Nazki, ACJ)

Heard learned counsel for the parties.

This writ petition has been filed in public interest seeking relief in the following terms:

"To issue a Writ of Mandamus declaring the action of the 2nd respondent in calling for tenders for running the medical shops in the premises of the 2nd respondent vide notification in Rc.No.4/59/2005/HRD/H1 dated 27-06-2005 published in newspaper on 28-06-2005 on the terms and conditions included in the tender form in pursuance thereof without providing for an obligation on the lessee of the medical shops to offer discount on medicines sold to the patients, without providing for distribution of surplus to set up a fund earmarked for welfare activities as arbitrary, illegal, offending Article 14 of the Constitution of India and consequently direct the 2nd respondent to provide for such terms in the contract so as to provide for discounts and distribution of surplus to a fund to finance medicare for the poor and needy."

The petitioner challenges the action of the second respondent in issuing tenders for running medical shops in the premises of Nizam's Institute of Medical Sciences, Hyderabad, for a period of two years. The notification calling for tenders was issued on 27-06-2005. The main grievance of the petitioner appears to be that while the pharmacies were run by the Institute itself earlier, now the pharmacies are being given to private pharmacists. In the earlier method, the profits earned were used for the purpose of the benefit of the patients almost 100 per cent and whereas under the new method, the patients would not get any benefit. In para 6 of the writ affidavit it has been stated that the following conditions were earlier adhered to.

1. "The lessee who runs the medical shops should extend 10% discount on the maximum retail price (MRP) to the NIMS patients and 15% discount on the MRP to *bona fide* NIMS employees.

2. The lessee would be required to supply medicines to the institute on credit for a period of 90 days, if the institute so desired.

3. Any surplus after deducting all expenses in the running of medical shops by the lessees was to be apportioned between the parties as under:

NIMS Fund for the care of poor young patients and equipment managed by representatives of the lessee, NIMS and the Indian School of Business

(ISB) 60%

Chief Minister's Relief Fund 5%

The fund to be created by the lessee for the benefit of poor patients in Government Hospitals 35%

4. The above distribution would be done after the lessee submits its books of account on a quarterly basis to be audited by the institute and on the basis of such audited accounts."

On the other hand, the respondents have filed their counter, in which they have stated that the Nizam's Institute of Medical Sciences is an autonomous Institute and has to live by its own resources. The Institute is giving treatment to the poor people by giving maximum percentage of concessions on fees and other facilities and in order to meet the expenditure to some extent, the Institute had leased its premises even for running a canteen on a monthly rent of Rs.1,37,500/-, cycle stand for Rs.68,786/- per month and two telephone booths each for Rs.19,500/- per month. It is also stated that the Institute has about 2200 employees and the monthly salary pay is around Rs.2.90 crores. The Institute is further paying Rs.35 lakhs towards water and electricity charges. Even earlier, the shops relating to medicines were given on lease to Essential Medical Services (ESMEDS, owned by Red Cross). After expiry of the lease, the ESMEDS vacated the premises and the shops were given on lease to Nizam's Pharmacy, a unit of FEDCON on a monthly rent of Rs.60,000/- for each shop. On expiry of lease with Nizam's pharmacy, the Institute called for tenders with certain terms and conditions and IRHS an NGO has succeeded in the tenders, but they committed breach of terms and conditions of the agreement. They did not pay an amount of Rs.38,67,305/- up to 31st March, 2005 and the respondents are taking steps to recover the amount from them. Therefore, the Institute decided to re-tender the shops and there are four shops in the Institute which now fetch Rs.5,14,600/-, 4,27,000/-, 4,64,000/- and 3,24,000/- per month respectively and this money earned would again be utilized for the patient care.

In this view of the matter, we do not think that there is any reason for us to intervene in the matter, as the Institute is the best judge to decide as to how to raise funds necessary for running the Institute. In any case, we do not think that by tendering these shops, the patients would suffer because the money earned by the Institute is again 100 per cent used for the welfare and care of the patients.

The writ petition is accordingly dismissed. No order as to costs.

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(Bilal Nazki, ACJ)

27th September, 2005

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(R.Subhash Reddy,J)

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